

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RAMIRO FELIX GONZALES,
Plaintiff,

v.

BRYAN COLLIER, Executive Director
of the Texas Department of Criminal
Justice, BOBBY LUMPKIN, Director
of the Texas Department of Criminal
Justice–Correctional Institutions
Division, and DENNIS CROWLEY,
Warden of the Huntsville Unit,
Defendants.

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CIVIL ACTION NO. 4:21-CV-00828

**DEFENDANTS' OPPOSED MOTION TO ALLOW DEFENDANT LUMPKIN TO
TESTIFY AT TRIAL BY REMOTE VIDEOCONFERENCE**

Defendants Bryan Collier, Bobby Lumpkin, and Dennis Crowley (collectively, “Defendants”), by and through the Office of the Attorney General of Texas, file this Opposed Motion to Allow Director Lumpkin to Testify at Trial by Remote Videoconference. Director Lumpkin is not available to testify in-person at trial, which is scheduled to begin on July 5, 2022. On February 22, 2022, this Court issued a scheduling order, *see* ECF No. 26, which scheduled a bench trial to be held on June 27 and June 28, 2022. Prior to the Court issuing its Amended Scheduling Order on May 20, 2022, *see* ECF No. 36, and rescheduling the bench trial for July 5 and July 6, 2022, Director Lumpkin scheduled a vacation for the week of July 4, 2022. He prepaid for the trip. As a result, Director Lumpkin will be out-of-state and located far from the site of the trial on July 5 and July 6, 2022.

Pursuant to Federal Rule of Civil Procedure 43(a), Defendants have provided good cause as to why Director Lumpkin is not available to testify in-person and respectfully request that this Court allow Director Lumpkin to give live testimony by video on Tuesday, July 5. Director Lumpkin is available to attend trial by remote videoconference on July 5 for any amount of time and without time restrictions. Should trial continue to July 6, 2022, Director Lumpkin will also be available by videoconference that day.

The decision to permit testimony by videoconference falls within this Court's discretion. Specifically, Rule 43(a) provides that "[f]or good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location." FED. R. CIV. P. 43(a). Permitting Director Lumpkin's testimony by videoconference will also allow the Plaintiff to cross-examine Director Lumpkin. Because Director Lumpkin will be out-of-state and available to give live testimony by videoconference on July 5, Defendants request that the Court allow Director Lumpkin to testify at trial by remote videoconference.

Respectfully submitted,

KEN PAXTON

Attorney General of Texas

BRENT WEBSTER

First Assistant Attorney General

GRANT DORFMAN

Deputy First Assistant Attorney General

SHAWN E. COWLES

Deputy Attorney General for Civil Litigation

SHANNA E. MOLINARE

Division Chief

Law Enforcement Defense Division

/s/ Leah O'Leary

LEAH O'LEARY

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF CONFERENCE

I, **LEAH O'LEARY**, certify that on June 27, 2022, I conferred with counsel for Plaintiff regarding this motion to testify by remote videoconference. Plaintiff is opposed to this motion.

/s/ Leah O'Leary

LEAH O'LEARY

Assistant Attorney General

CERTIFICATE OF SERVICE AND ELECTRONIC FILING

I, **LEAH O'LEARY**, hereby certify that on June 27, 2022, I electronically filed the foregoing document with the Clerk of the Court for the United States Court for the Southern District of Texas using the electronic case-filing (ECF) system of the Court, which electronically serves all counsel of record and registered users in this case.

/s/ Leah O'Leary

LEAH O'LEARY

Assistant Attorney General